

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN THOMAS ENTLER,)
Plaintiff,) CASE NO. C10-848-RAJ
v.)
RICHARD ADAME,) REPORT AND RECOMMENDATION
Defendant.)
_____)

Pro se plaintiff John Thomas Entler, proceeding *in forma pauperis*, brings a 42 U.S.C. § 1983 civil-rights action, alleging that he suffered retaliation at the hands of corrections officer Edward Adame for having exercised his First Amendment right to grieve improper conduct by Officer Adame. (Dkt. 8, at 24.) Officer Adame moves for summary judgment though he adds no additional argumentation or evidence to his previously denied motion to dismiss. (Dkt. 19.) The Court recommends **DENYING** Officer Adame's motion for summary judgment and scheduling this matter for trial.

BACKGROUND

Mr. Entler is presently incarcerated in the Washington State Reformatory, Monroe

01 Correctional Complex. In 2009, Mr. Entler apparently had been granted “priority access” to
 02 the law library. (Dkt. 8, at 16.) According to Mr. Entler, Officer Adame refused to let him
 03 use this priority access. (*Id.*) Mr. Entler states that before filing a formal grievance against
 04 Officer Adame, he tried to resolve his concerns informally through complaining to supervisory
 05 personnel in excess of 100 times. (*Id.*) How Officer Adame responded to Mr. Entler’s
 06 complaints forms the basis for Mr. Entler’s claim of retaliation.

07 First, Mr. Entler contends that Officer Adame infacted him falsely twice, once in
 08 January 2009 and once in February 2009 in retaliation for complaining about Officer Adame’s
 09 conduct. (*Id.* at 17–19, 24.) On both occasions, Mr. Entler was found to be not guilty of the
 10 infractions. (Dkt. 20-1, at 26, 31.) Mr. Entler states that he then filed a formal grievance
 11 against Officer Adame for the false infractions but was persuaded by Correctional Unit
 12 Supervisor (“CUS”) Miller to retract his grievance because CUS Miller “would personally
 13 remedy C/O R. Adame’s behavior, and I preserved the right to reinitiate the grievance process if
 14 C/O R. Adame continued to harass and retaliate against me.” (Dkt. 8, at 20.)

15 Second, Mr. Entler contends that Officer Adame entered into a pattern of conduct that,
 16 while at times technically justified, constituted a pattern of harassment and retaliation for Mr.
 17 Entler’s complaints. (*Id.* at 20–23.) Specifically, Mr. Entler alleges that Officer Adame
 18 (1) continued to not let him out of his cell for priority access, (2) intentionally refused to allow
 19 him out of his cell to get ice, (3) made him violate the prison policy against leaving personal
 20 property outside his cell through selective enforcement of rules, and (4) singled him out for
 21 punishment by arbitrarily keeping him in his cell all night. (*Id.* at 24.)

22 The Court denied Officer Adame’s motion to dismiss. (Dkt. 15.) Officer Adame now

01 moves for summary judgment. (Dkt. 19.) He makes no reference to evidence outside of what
 02 Mr. Entler provided to support his claims, raises no issues that were not already rejected in the
 03 order denying the motion to dismiss, and did not file a reply brief.

DISCUSSION

05 Officer Adame moves for summary judgment, contending that there is insufficient
 06 evidence to support a claim that he retaliated against Mr. Entler for having exercised his First
 07 Amendment right to file grievances about Officer Adame's conduct.¹ (Dkt. 19, at 2.) In
 08 response, Mr. Entler submits an affidavit, a witness declaration, and documents from the
 09 disciplinary proceedings that support his assertion that there was no valid basis for having been
 10 infracted by Officer Adame. (Dkt. 20-1, at 11–45.) The Court finds that there is a genuine
 11 issue of material fact such that Officer Adame is not entitled to judgment as a matter of law.

12 *See, e.g.*, Report and Recommendation, at 10–15, *Entler v. Perales*, C07-5167-FDB-KLS
 13 (W.D. Wash. Oct. 13, 2008) (concluding, on defendants' motion for summary judgment, there
 14 was a genuine issue of material fact as to one defendant regarding whether Mr. Entler was
 15 infracted in retaliation for his exercise of First Amendment rights); Summary Judgment Order,
 16 at 1, *Entler v. Bolinger*, C05-5122-FVS (E.D. Wash. Mar. 21, 2008) (concluding there was a
 17 genuine issue of material fact regarding defendant's motivation for issuing a minor infraction to
 18 Mr. Entler and confiscating his property).

19
 20 1 Summary judgment is warranted "if the movant shows that there is no genuine dispute as to any
 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The evidence is
 viewed and reasonable inferences are drawn in the light most favorable to the nonmoving party. *United States v.*
 Johnson Controls, Inc., 457 F.3d 1009, 1013 (9th Cir. 2006). The nonmovant must do more than simply deny the
 veracity of everything offered or show a mere "metaphysical doubt as to the material facts." *Matsushita Elec.*
 Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); *see* Fed. R. Civ. P. 56(c). The mere existence of a
 scintilla of evidence is likewise insufficient to create a genuine factual dispute. *Anderson v. Liberty Lobby, Inc.*,
 477 U.S. 242, 252 (1986).

01 **I. Genuine Issue of Material Fact**

02 Whether a state prisoner can support a claim of retaliation against a corrections officer
 03 on the basis of First Amendment rights to file prison grievances and pursue civil-rights
 04 litigation is well-travelled terrain:

05 Within the prison context, a viable claim of First Amendment retaliation entails
 06 five basic elements: (1) An assertion that a state actor took some adverse action
 07 against an inmate (2) because of (3) that prisoner's protected conduct, and that
 action (4) chilled the inmate's exercise of his First Amendment rights, and
 (5) the action did not reasonably advance a legitimate correctional goal.

08 *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005). Mr. Entler has supported the
 09 following allegations: (1) Officer Adame falsely inflicated him and attempted to limit his
 10 movement and to discredit him in the eyes of prison authorities (2) because of (3) Mr. Entler's
 11 attempts to access the law library and complaints regarding Officer Adame's conduct, and
 12 Officer Adame's actions (4) chilled Mr. Entler's exercise of his First Amendment rights, and
 13 (5) the actions did not reasonably advance a legitimate correctional goal. (Dkt. 20-1, at 11-19
 14 (Entler Aff.), at 22–24 (Earl Decl.), at 26 (finding of not guilty in infraction report), at 31
 15 (finding of not guilty in infraction report), at 38 (response to Mr. Entler's grievance stating that
 16 Officer Adame received additional training and that this should resolve the request that Officer
 17 Adame be disciplined).)

18 If the evidence is viewed in the light most favorable to Mr. Entler, as it must be on
 19 summary judgment, then there is a genuine issue of material fact about whether the
 20 circumstances show that Officer Adame's conduct constituted retaliation for Mr. Entler's
 21 protected right to file grievances. *See Brodheim v. Cry*, 584 F.3d 1262, 1269–70 (9th Cir.
 22 2009) (“As we have stated multiple times, a retaliation claim may assert an injury no more

01 tangible than a chilling effect on First Amendment rights. . . . Thus, the mere *threat* of harm
02 can be an adverse action, regardless of whether it is carried out because the threat itself can have
03 a chilling effect.”).

04 **II. Qualified Immunity**

05 Officer Adame also argues that he is entitled to qualified immunity. That argument is
06 foreclosed by the Ninth Circuit’s recognition that the prohibition against retaliatory punishment
07 is clearly established law, and that a reasonable officer would believe that falsely infracting an
08 inmate and attempting to limit his movement and to discredit him would be unlawful. *See*
09 *Rhodes*, 408 F.3d at 569–70; *cf. Brodheim*, 584 F.3d at 1269–71 (holding that there was a
10 genuine issue of fact for trial and noting that a prison official’s mere warning a person to stop
11 doing something carries the implication of some consequence of a failure to heed that warning).

12 **CONCLUSION**

13 The Court recommends **DENYING** Officer Adame’s motion for summary judgment
14 and setting this matter for trial. A proposed order is attached.

15 DATED this 21st day of April, 2011.

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17 
18 Mary Alice Theiler
19 United States Magistrate Judge
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